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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

IN RE GREGORY V.,  
a Person Coming Under  
the Juvenile Court Law.

H027569  
(Monterey County  
Super. Ct. No. J35098)

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY V.,

Defendant and Appellant.

Following a contested hearing, the juvenile court sustained a Welfare and Institutions Code section 602 petition, finding true allegations that appellant committed a robbery and an assault by means likely to produce great bodily injury, and a battery on a school employee. (Pen. Code, §§ 211, 245, subd. (a)(1), 243.6.) The juvenile court committed appellant to the Monterey County Youth Center. Appellant challenges the finding that he committed a battery against a school employee. We affirm.

**Juvenile Court Proceedings**

Javier Reyes testified that for the past 13 or 14 years he has been a groundskeeper and bus driver for King City High School. His duties include driving the bus, "trash

duties, setting up for ball games and stuff." Around noon one September school day, he was eating his lunch on the school grounds when he saw a fight involving four students. He testified, "I ran over there and I jumped on one of them and I told the other one to back off while they were on the floor, and the other one was standing next to me. A teacher had the other one." Reyes said, "I was escorting the two kids that I stopped from fighting," to the office when appellant "came from behind." Reyes said, "as I was taking them to the office there, I noticed one of the kids started to look back. So I looked back . . . ." To Reyes, appellant "looked like he wanted to start something with one of the kids." Reyes told appellant to "back off." Appellant told Reyes to "[f]uck off." Appellant was still "sort of like trying to come up on" the other student, so Reyes "went to go grab him by the shoulder." Reyes testified, "[appellant] took a swing at me. As I was trying to grab his shoulders, he took a swing. I don't know if he was trying to hit me or trying to hit my arm away, I'm not sure, but either way, he took a swing at me." Appellant hit Reyes on the forearm. Reyes saw a security guard approaching, and told him to get appellant, but appellant ran away.

Luis Estaban and Josue Pina were the two students Reyes was escorting to the office. Estaban testified that appellant "tried to hit [Josue Pina], but the janitor tried to grab him and he hit the janitor." Pina testified that appellant "tried to punch me like that, but I moved. That's when the janitor came and like grabbed his shoulder." Pina said, appellant "punched the janitor."

At the conclusion of the jurisdictional hearing, the juvenile court found true the allegation that appellant had committed a battery on a school employee. (Pen. Code, § 243.6.) The juvenile court found not true allegations that appellant unlawfully entered the King City High School campus, fought in a public place and committed a battery on Luis Estaban. The juvenile court found true allegations unrelated to this appeal that appellant had committed a robbery and an assault by means likely to produce great bodily injury. (Pen. Code, §§ 211, 245, subd. (a)(1).)

## Self-Defense

Appellant contends, "The evidence was legally insufficient to establish that appellant committed a battery against groundskeeper Reyes." He argues, "The evidence failed to establish that appellant committed any battery because his use of force was the direct result of Reyes['s] efforts to unlawfully touch him."

"In assessing the sufficiency of the evidence, we review the entire record in the light most favorable to the judgment to determine whether it discloses evidence that is reasonable, credible, and of solid value such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Bolin* (1998) 18 Cal.4th 297, 331.) We resolve all conflicts in the evidence and questions of credibility in favor of the verdict, and indulge every reasonable inference the trier of fact could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) Reversal on this ground is unwarranted unless " 'upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' " (*People v. Bolin, supra*, 18 Cal.4th at p. 331.) "The trier of fact, not the appellate court, must be convinced of the minor's guilt, and if the circumstances and reasonable inferences justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*In re James B.* (2003) 109 Cal.App.4th 862, 872.)

Appellant cites *People v. McKelvy* (1987) 194 Cal.App.3d 694, 706, footnote 8, in support of his argument that Reyes, in trying to grab appellant's shoulder, was committing an assault and thus appellant was acting in self-defense in swatting Reyes's arm away from him. In *McKelvy*, the wheelchair-bound defendant was convicted of mayhem after a barroom brawl in which the defendant struck another patron in the eye with a pool cue and testified that he was afraid the other patron was going to hit him. The lead opinion in *McKelvy* states that an honest but unreasonable belief in the need for self-defense negates the malice required for a conviction of mayhem, and therefore mitigates

the crime to assault or battery. The footnote to which appellant cites this court reads, "Consistent with CALJIC 5.30, the jury was told: 'It is lawful for any person who is being insulted to defend himself from an attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, he may use all reasonable force and means which he believes to be reasonably necessary, *and which would appear to a reasonable person in the same or similar circumstances to be necessary to prevent injury which appears to be imminent.*' (Italics added.)" (*McKelvy, supra*, 194 Cal.App.3d at p. 706, fn. 8.)

Appellant argues, "Reyes had no legal cause to attempt to grab appellant merely because he had cursed at him."<sup>1</sup> He complains, "Reyes merely speculated that appellant was going to start a confrontation with the boys he was escorting." Appellant focuses only on Reyes's testimony. In so doing, he ignores other testimony that undercuts his argument. Although Reyes's testimony contained the statement "I don't know if he was trying to hit me or trying to hit my arm away," he did say that "[appellant] took a swing at me." Luis Estaban testified that appellant "tried to hit [Josue Pina], but the janitor tried to grab him and he hit the janitor." Josue Pina testified that appellant "tried to punch me like that, but I moved. That's when the janitor came and like grabbed his shoulder." Pina said appellant "punched" Reyes. This testimony conveys an immediacy of Reyes's action that is consistent with the groundskeeper acting to prevent appellant from making contact with Pina, particularly when appellant indicated, by cursing at Reyes, that he was not going to comply with Reyes's instruction to appellant that he "back off." It is substantial evidence incompatible with self-defense from which the juvenile court could reasonably

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<sup>1</sup> Defense counsel advanced a version of this self defense argument, explaining that Reyes was not performing his duties as a school employee when he broke up the fight and that, "I think that the Court would have to find that [appellant] was attempting to get away from being grabbed and therefore he would not even be guilty of a simple battery."

determine that appellant was not justified in resisting Reyes's efforts to keep him from assaulting Pina.

### **Reyes's Duties**

Appellant contends, "The juvenile court erred when it found that there was sufficient evidence to support the finding that appellant violated Penal Code section 243.6, when at most appellant committed a misdemeanor battery." He argues, "The evidence was legally insufficient to establish that the groundskeeper was engaged in the performance of his duties at the time of the battery."

Penal Code section 243.6 defines a battery against a school employee as: "[A] battery . . . committed against a school employee engaged in the performance of his or her duties, or in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know that the victim is a school employee . . . ."

Appellant analogizes his case to "to cases where courts considered whether a police officer was engaged in the performance of his/her duties at the time of a battery." Appellant relies on *In re Manuel G.* (1997) 16 Cal.4th 805.<sup>2</sup> *In Manuel G.*, the court said, "The longstanding rule in California and other jurisdictions is that a defendant cannot be convicted of an offense against a peace officer ' "engaged in . . . the performance of . . . [his or her] duties" ' unless the officer was acting lawfully at the time the offense against the officer was committed. [Citations.] 'The rule flows from the premise that because an officer has no duty to take illegal action, he or she is not engaged in "duties," for purposes of an offense defined in such terms, if the officer's conduct is unlawful. . . . [T]he lawfulness of the victim's conduct forms part of the corpus delicti of the offense.' [Citation.]" (*Id.* at p. 815.)

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<sup>2</sup> Appellant includes a footnote asserting, "[T]he court failed to adequately instruct the jury." As there was no jury to instruct in this contested jurisdictional hearing held in juvenile court, we assume this is a word processing error.

Reyes testified his duties included driving the bus, "trash duties, setting up for ball games and stuff." When asked if escorting the fighting students to the vice principal's office would be considered one of his duties, he answered, "Well, not really, but when they ask us to do – you know, if we see something, you know, to help out." He was asked, "When you're on campus and working, if you see any kind of incident, what would you as an employee do?" He answered, "Well, we can either stop it ourselves or call it in." He said, "I mean if it's bad enough, whatever is going on, yeah, we can either go on and stop whatever it is, say, like graffiti, fight or fighting or things like that, we can step in and break up whatever is going on."

The juvenile court said, "We have a school employee who is trying to break up a fight. It's not somebody running off the street who doesn't know what's happening and going on. [¶] Having somebody, even assuming they're trying to pull their arm away, they're trying to get away from somebody who is trying to perform a duty and perform his job by stopping the fight. . . . [¶] The janitor testified he was on school grounds in the lunch area, sitting down with all the other minors, watching them, and when the fight occurred, I hope we're not at a point in society where you have somebody who's just going to stare and watch a fight occur, let kids be out of control and go not my job. I'm just going to watch them fight. [¶] I think he had a duty by being a school employee sitting in the lunch area, watching the kids and seeing the fight and doing something to assist the school and keeping school order. [¶] And that's what he did. He tried to get up, stop the fight, escorted people to the office. [¶] And in the course of doing his duty in escorting the people to the correct people -- that would be the office -- then [appellant] decides he wants to come up and join in the altercation, and in that he did in fact batter Javier Reyes."

Reyes's testimony established that his primary duties were those of a bus driver and groundskeeper, but that he is expected to help out when incidents of this type occur

in his presence.<sup>3</sup> Undoubtedly the Spanish teacher who helped Reyes break up the fight would not describe doing so as part of his official duties in teaching Spanish. Yet, as this court recognized in *In re Ernesto H.* (2004) 124 Cal.App.4th 647, 661-662, "among the many duties of a high school teacher, is the duty of maintaining order, preventing fighting and keeping students safe." *Ernesto H.* did not limit those duties to teachers alone. It is a reality of school life, as the juvenile court recognized, that employees who have contact with students must be prepared to act as peacekeepers. Sufficient evidence supported the trial court's determination that Reyes was engaged in the performance of his duties at the time of the battery.

### **Disposition**

The order appealed from is affirmed.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.

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<sup>3</sup> Although it plays no part in our decision here, we observe that this is not the first time Reyes has had to act in this role. Apparently, earlier in the school year, Reyes informed a police officer that appellant had been involved in another altercation at the school and "the officer heard [appellant] calling Reyes a 'nark' from the vice principal's office."